IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.29647 of 2004
and
W.M.P.No.36013 of 2004

S.V.Sivalinga Nadar & Sons
Rep by its Partner S.V.S.Velkumar
(444) 866, Pandit Jawaharlal Nehru Road
Villupuram. .. Petitioner

..Vs..

The Commercial Tax Officer
Villupuram-II, Villupuram District. .. Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the revised pre-assessment notice dated 24.09.2004 issued by the respondent herein in respect of the petitioner's TNGST No.4700209 in so far as inclusion of the market fees or cess paid in the taxable turnover for the assessment year 1999-2000 and to quash the same.

For Petitioner : Mr.V.S.Sivasundaram

For Respondents: Ms.Vasudha Thiagarajan, A.G.P.,

ORDER

Heard Mr.V.S.Sivasundaram, learned counsel appearing for the petitioner and Ms.Vasudha Thiagarajan, learned Additional Government Pleader appearing for the respondent.

2.The petitioner in this writ petition challenges the pre-revision notice dated 24.09.20004 in so far as it includes the market fee paid in the taxable turn over of the petitioner for the assessment year 1999-2000. The petitioner is the firm engaged in the manufacture of groundnut oil and vegetable oil and registered as a dealer on the file of the respondent. The petitioner has been regularly purchasing ground nuts for manufacturing oil from the agriculturists. The petitioner is also a licensee under the Tamil Nadu Agricultural Produce

Marketing Regulation Act, 1987 having valid permit for bringing the purchased ground nuts within the notified area from the agriculturists, after paying requisite market fee for the total purchase turn over every day, as per Section 24 of the 1987 Act.

3.The petitioner's contention is that the market fee or cess which is paid by the petitioner is in the nature of compensation for the special services rendered by the market committee and there must be quid pro quo for the services rendered by the Government or local body and such pre-expenses levied in rendering service by the market committee cannot form part of the taxable turnover for the purpose of levying tax and as such expenses are only liable to be deducted from the total turn over.

4.While so, the petitioner has received pre-revision notices for the assessment years 1997-98 and 1998-99. In the said notices, the respondent had stated that the petitioner have paid cess to the regulated market committee for the purchase of ground seeds and such payment of cess would form part of the purchase turn over liable to tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

5.The petitioner submitted their objections stating that the sale cannot form part of the purchase turn over as it will not fall within the definition of the taxable turn over as defined under Section 2(p) of the TNGST Act. It is further contended that the market fee or cess being only expenses for the purchase made and it is not a tax for the purpose of inclusion in the taxable turn over. Since the respondent was not inclined to accept the stand, the petitioner approached this Court and filed this writ petition which was admitted and an order of interim stay was granted. The case was heard on several dates and on the last hearing date viz., 23.06.2016, the Court passed the following order:

> “The learned counsel for the petitioner submitted that the legal issue raised in this writ petition is as to whether the 'Cess' paid by the petitioner to the Market committee could be included in the total and taxable turnover of the petitioner, who is a purchaser of the products, which are made available for sale in a regular market, which is administered by a Market Committee under the provisions of the Tamil Nadu Agricultural Produce Marketing Regulation Act, 1987.
>
> 2.The Division Bench of this Court has held that the Market Committee is a Tahsildar. The learned counsel referred to the decision of this Court in 29 STC 1 and the decision of the Punjab and Haryana High Court in 91 STC 398 stating that the Market fee cannot be included in the turnover. The learned counsel sought

to distinguish the decision of the Hon'ble Supreme Court in the case of State of Kerala v. Madras Rubber Factory Limited [1998 (vol.108) STC 583], stating that the 'rubber cess' levied therein is a duty of excise unlike the cess paid by the petitioner/purchaser to a regulated market. It is further submitted that in the case of 'rubber cess' it has been paid by the producer.

3.The learned Additional Government Pleader appearing for the respondent seek time to get instructions in the matter.

List the matter on 20.07.2016."

Thus, the contention of the petitioner is that the legal issue raised in this writ petition is covered by the decision referred above.

6.In the case of Guranditta Mal Shauti Parkash Rice Mills v. State of Punjab and Another reported in Vol 91 STC Page 398, the Hon'ble Division Bench of Punjab and Haryana High Court was considering an identical case where the petitioners were registered dealers under the Punjab General Sales Tax Act, 1948 and licensees under the Punjab Agricultural Produce Marketing Act, 1961. They had effected purchase of agricultural produce from other licensees in the area of the same market committee and paid market fee on such transactions to the market committee. The question was whether the market fee was liable to be included in the turn over of the petitioners for the purpose of levying tax under the Punjab General Sales Tax Act, 1948. Answering the question, the Hon'ble Division Bench had observed as follows:

"Held, that Section 23 of the Punjab Agricultural Produce Markets Act, 1961 and rule 29(2) of the Rules framed thereunder make it clear that the liability to pay market fee is of the buyer (purchaser). If the buyer is a licensee in the same market area, it is he who is to deposit the market fee with the market committee concerned. If the buyer is not a licensee in that market committee area then it is the seller who is to deposit the amount of the market fee, with that market committee and he may realise the same from the buyer. This would show that it is the legal duty and liability of the buyer to pay the market fee in case of effecting purchases of the agricultural produce. In cases where the petitioners purchased agricultural produce in the market area where they were registered as licensees, and it was the legal duty of the buyer (purchaser) to pay the market fee, as the petitioners were licensees within the market area, such market fee was not paid by them to the sellers. Obviously the amount of the market fee could not be part of the sale consideration. The petitioners thus were not required to show in their turnover the amount of the market fee as part of the purchase price of such of the agricultural produce purchased by them locally. Such market fee could not form part of the turnover for assessment or payment of purchase tax. In cases where the petitioners purchased produce in areas where they were not registered as licensees also, since the legal liability to pay market fee is on the buyer and if such a buyer is not a licensee of that market area, it is the duty of the seller to deposit the market fee on behalf of the buyer and then to realise it from the buyer, it is not the legal obligation of the seller to pay market fee on such a transaction, and the amount of market fee could not be treated as part of the sale consideration. The payment of market fee was not something special asked by the purchaser to be done for effecting delivery of the goods. The amount of such market fee could not be part of the turnover and thus no purchase tax was to be paid by the petitioners."

7.In the case of Cauvery Sugars and Chemicals Ltd., and Others v. The Joint Commercial Tax Officer, Esplanade I, Madras and Another reported in Vol 29 STC Page 1, the Hon'ble Division Bench considered what is turn over as defined under Section 2(r) of the Madras General Sales Tax Act, 1959 and it was pointed out that the turn over is totality of price paid as consideration for each transaction of sale or purchase. The question which arose was whether the cess paid by the buyer form part of the purchase turn over?

8.On considering the facts of the said case and the relevant enactment namely, Madras Sugar Factories Control Act, 1949, the nature and incidence of cess was not intended to form part of the consideration for the purchase of sugar by the assessee therein. The said principle could very well be applied to the case on hand also, since the petitioner had paid the fee or cess to the regulated market committee which renders certain services to the seller and the purchaser. In other words, the market committee acts as a facilitator for which a fee is collected.

9.Therefore, the impugned notice dated 24.09.2004 has been issued on a total misconception of what is taxable turn over and the fee/cess paid by the petitioner to the market committee cannot form part of the taxable turn over nor made liable to tax.

10. In view of the above stated position, the writ petition

is allowed and the impugned notice dated 24.09.2004 is set aside. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer
Villupuram-II, Villupuram District.

+1 cc to Spl.Govt.Pleader,sr.49535

+1 cc to Mr.V.S.Sivasundaran, advocate,sr.49485.

gj(co)
krd 13/10

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